

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREW MARKS

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case No. C08-5152BHS-JKA

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Kelley Arnold (Dkt. 3). The Court has considered the Report and Recommendation, Plaintiff's objections (Dkt. 4), and the remainder of the file, and hereby adopts the Report and Recommendation for the reasons stated herein.

I. BACKGROUND AND DISCUSSION

On March 24, 2008, Plaintiff was declared a vexatious litigant. *Marks v. United States of America*, C07-5679FDB, Dkt. 8. Plaintiff is now litigating subject to sanctions that require a showing of imminent danger of serious bodily injury or death before Plaintiff may proceed in forma pauperis. *See id.*

Such sanctions were not yet in place when Plaintiff's complaint was filed in this matter. Accordingly, Plaintiff should not be punished for failing to comply with such sanctions.

The fact remains, however, that Plaintiff has been declared a vexatious litigant, and the sanctions order entered in *Marks v. United States of America*, C07-5679FDB, is well taken.

1 Therefore, Plaintiff's Motion for Leave to Proceed in Forma Pauperis is denied, but Plaintiff will
2 be afforded an opportunity to supplement his motion. In these proceedings, Plaintiff is expected to
3 fully comply with the sanctions order entered in *Marks v. United States of America*, C07-
4 5679FDB, Dkt. 8. Failure to file a signed affidavit verifying under penalty of perjury that (1) none
5 of the issues raised in the proposed complaint have been litigated in the past by Plaintiff and (2)
6 showing that he is in imminent danger of serious bodily injury or death, will result in dismissal of
7 this matter without further notice to Plaintiff.

8 **II. ORDER**

9 Therefore, it is hereby

10 **ORDERED** that the Court **ADOPTS** the Report and Recommendation of the Honorable J.
11 Kelley Arnold (Dkt. 3), Plaintiff's Motion for Leave to Proceed in Forma Pauperis (Dkt. 1) is
12 **DENIED**, and failure to comply with this order and with *Marks v. United States of America*, C07-
13 5679FDB, Dkt. 8, or pay the filing fee on or before June 13, 2008, will result in dismissal without
14 prejudice and without further notice to Plaintiff.

15 DATED this 14th day of May, 2008.

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BENJAMIN H. SETTLE
United States District Judge